



State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

Water Right No.: S4-26927
WR Doc ID: 2283682

PRIORITY DATE July 15, 1980	WATER RIGHT NUMBER S4-26927
MAILING ADDRESS Silver Cove Summer Home Association c/o Scott Seiler 4311 Laurel Drive West Richland, WA 99353	SITE ADDRESS (IF DIFFERENT) Silver Cove Summer Home Association See Location Below

REMARKS: This water right will be mitigated by a water right held in trust with a pre-1905 priority date.

Quantity Authorized for Withdrawal or Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AC-FT/YR)
0.01	CFS	3.2

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AC-FT/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Group Domestic (Indoor Use for 21 cabins)	0.01		CFS	3.2		Continuously

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Yakima	Unnamed Spring	Rimrock Lake	38-Naches

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Point of Diversion	13130199992	13N	13E	1	NWNW	46°38'55.29"N	121° 9'16.94"W

Datum: WGS84

Place of Use (See Map: Attachment 1)

PARCEL
13130111002, 13130111003, 13130111004, 13130111005, 13130111006, 13130111007, 13130111008, 13130111009, 13130111010, 13130111011, 13130111012, 13130111013, 13130111014, 13130111015, 13130111016, 13130111017, 13130111018, 13130111019, 13130111020, 13130111021, 13130111022

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Silver Cove Summer Home Association, Lots 1-18 and 21-23, located northerly of State Highway No. 12 within the NW¼ of Section 1, T. 13 N., R. 13 E.W.M.

Proposed Works

The point of diversion is located at a small unnamed spring, approximately 1,400 feet above Rimrock Lake. Water is diverted from the improved spring, filtered, chlorinated, and stored prior to distribution to the cabin community through one of two main distribution lines. Water which is not consumptively used is either discharged via overflow, or to individual on-site septic systems.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Complete	Complete	January 1, 2019

Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)

Provisions

General

You will record with the Yakima County Auditor an appropriate conveyance instrument under which the applicant obtains an interest in Trust Water Certificate Nos. CS4-00195CTCL(A)s6, CS4-00195CTCL(B)s6, and CS4-00195CTCL(C)s6 – collectively known as Bruton Ditch – to offset consumptive use as described in this document.

Mitigation

Water use under this authorization is mitigated by a contract between Ecology and the Silver Cove Summer Home Association for an equal or greater amount of the consumptive use from instream flow rights held by Ecology as part of the Washington State Trust Water Right Program (TWRP).

The Department of Ecology may assign a portion of its trust water to the United States Bureau of Reclamation-Ecology Water Storage and Exchange Contract No. 09XX101700 to mitigate for operational impacts to the Yakima Irrigation Project. You shall pay to the Department of Ecology the invoiced sum, which is owed to the United States for storage and delivery of water under paragraph 15(a) of the contract.

During periods of water shortages, priority calls against the source trust water right providing mitigation for this project may be made. If that priority call for water is found to be valid, water use under this authorization may be temporary curtailed until the priority call for water ends.

Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

Water Use Efficiency

Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements.

Certification

A permit will issue to appropriate surface water based on the quantities described on Page 1 of this report following the appeal period for this decision, and will remain in permit status through the pendency of the Yakima County Superior Court Adjudication Proceedings *State of Washington v. Acquavella*. A final certificate will issue only after the Court's Final Decree is entered and all matters (i.e. appeals) in the Adjudication Proceedings are settled.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S4-26927, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by chapter 43.21B RCW and chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION	
Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 Pollution Control Hearings Board 111 Israel Rd SW Ste 301 Tumwater, WA 98501	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Yakima, Washington, this _____ day of _____ 2014.

 Robert F. Barwin, P.E.,
 Acting Section Manger
 Water Resources Program/CRO
 Department of Ecology

If you need this document in a format for the visually impaired, call the Water Resources Program at 509-575-2490. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

INVESTIGATOR'S REPORT

BACKGROUND

Project Description

On July 15, 1980, Silver Cove Summer Home Association (SCSHA) filed Application No. S4-26927 with the Washington State Department of Ecology (Ecology) requesting an appropriation of public surface water. A temporary permit (No. S4-34941T) was subsequently issued authorizing an instantaneous rate (Qi) of 0.0025 cubic feet per second (cfs) and a cumulative annual diversion volume (Qa) of 1.8 acre-feet per year for community domestic supply for 21 recreational cabins. The application was later amended by Scott Seiler, SCSHA Water System Operator, for 0.01 cfs (Qi) and 3.2 ac-ft/yr (Qa). The purpose of use is for group domestic (indoor only) supply year round, as needed.

The subject application qualifies for Ecology's Cabin Owner Mitigation Program. As directed by Senate Bill 6861, Ecology is providing water banking opportunities for Yakima Basin Cabin Owners with junior claims (post-1905) to purchase senior mitigation credits to offset the consumptive use of water during years of rationing by the US Bureau of Reclamation. The program is also available to some unauthorized water users when specific suitability criteria are met. In these cases, the program allows Ecology to issue new mitigated permits and water budget neutral determinations.

Consumptive use will be mitigated through purchase of mitigation credits from Ecology's Cabin Owner Mitigation Program (Trust Water Right Nos. CS4-00195CTCL(A)sb6, CS4-00195CTCL(B)sb6, and CS4-00195CTCL(C)sb6) – collectively known as Bruton Ditch. The application is therefore water budget neutral with respect to Total Water Supply Available (TWSA). Out-of-season and/or carry over impacts to instream flows will be managed with use of Water Storage and Exchange Contract No. 09XX101700 between Ecology and the United States Bureau of Reclamation.

Table. Summary of Application No. S4-26927

<i>Attributes</i>	<i>Proposed</i>
Applicant	Silver Cove Summer Home Association
Application Received	July 15, 1980
Instantaneous Quantity	0.01 cubic feet per second
Source	Unnamed Spring
Point of Diversion	NW¼NW¼, Section 1, T. 13 N., R. 13 E.W.M.
Purpose of Use	Group Domestic (indoor only)
Period of Use	Year round
Place of Use	Silver Cove Summer Homes

Legal Requirements for Application Processing

The following requirements must be met prior to processing a water right application:

- **Public Notice**

Notice of the proposed appropriation was published in The Yakima Herald of Yakima, Washington, on June 27 and July 4, 2014. No comments were received during the 30-day comment period.

- **State Environmental Policy Act (SEPA)**

The subject application is categorically exempt under SEPA (WAC 197-11-305 and WAC 197-11-800(4)) because the instantaneous quantity is less than the 1.0 cfs threshold.

- **Water Resources Statutes and Case Law**

RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Rights Program (TWRP) in the Yakima River basin for water banking purposes. RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44 or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users. RCW 90.42.100(2)(b) states that water banking may be used to document water right transfers to and from the TWRP.

- **Expedited Processing**

This application qualifies for expedited processing under WAC 173-152-050(2)(d) which would result in providing for public water supplies. Based on the provisions of RCW 43.21A.690 and RCW 90.03.265, this application has been processed by Aspect Consulting, LLC (Aspect Consulting) under Ecology Cost-Reimbursement Assignment No. ASP018 (Master Contract No. C1000185).

INVESTIGATION

In consideration of this application, Aspect Consulting reviewed available documents pertaining to the historic use of water, site conditions, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including adjudication and water rights records and water resource policy and guidance documents.

A site visit was completed on July 15, 2013. Tyson Carlson and Breean Zimmerman (Aspect Consulting) met with Scott Seiler, SCSHA Water System Operator, to obtain additional information on the point of diversion, place of use, and answer questions regarding estimates of total or consumptive use.

This project was presented at the Water Transfer Working Group (WTWG) on August 5, 2013. This group represents private, federal, state and tribal groups interested in water right changes in the Yakima Basin. There were no objections to the cabins adjacent to Rimrock Lake receiving surface water permits mitigated by a senior water right from Ecology's water bank, as long as the consumptive use quantity needed for mitigation is assigned to Water Storage and Exchange Contract No. 09XX101700 between Ecology and the USBR.

In addition, Ecology has sought consultation with Reclamation who controls all remaining unappropriated waters of the Yakima River – including all tributaries and groundwater in continuity. Reclamation granted a release based on the requirement that the applicant will purchase mitigation.

Site Description

The proposed point of diversion is located approximately 1,400 feet upslope of Rimrock Lake, in the northwest quarter of the northwest quarter of Section 1, in Township 13 N., Range 13 East of the Willamette Meridian (W.M.), in the Naches Water Resource Inventory Area (WRIA 38).

The point of diversion consists of a small improved spring. Water is diverted from the improved spring, filtered, and stored prior to distribution to the cabin community through one of two main distribution lines. Water which is not consumptively used is either discharged via overflow, or to individual on-site septic systems.

Ecology issued SCSHA a temporary permit S4-26927T on April 15, 1985, and later amended on August 20, 1990. Temporary permit S4-26927T was issued for the purpose of community domestic supply for 21 recreational homes in the amount of 0.0025 cfs up to 1.8 acre-ft/yr. The temporary permit will be replaced by the subject water budget neutral mitigated permit.

Domestic Water Use

Senate Bill 6861 directed Ecology to facilitate the purchase of senior mitigation credits to offset the consumptive use of out-of-priority or unpermitted water use. In response, Ecology (2006) completed a survey to identify the number of water users that rely on surface water, how they use water (in-house and/or outside irrigation), and how much water they use. Ecology received 285 completed surveys from water users with and without water rights. Ecology estimated the group's annual water use by multiplying the gallon per day identified on the survey by the number of days the cabin was occupied. In cases where a water duty was not provided, Ecology used criteria developed for mitigation during the 2005 drought and/or procedures outlined in the Washington State Department of Health (2009) Water System Design Manual.

Based on the available metering data, the community has not diverted more than 1,040,000 gallons, or about 3.2 ac-ft/yr. However, much of this water is returned directly to the same source via overflow. Therefore, based on the data described above, Ecology has determined that the average seasonal recreational cabin uses no more than 100 gallons per day (gpd/cabin) or about 0.03 ac-ft/yr/cabin for occupancy up to 105 days per year. Ecology has assumed the same consumptive use defined by rule (WAC 173-539(A)-050(3)) in upper Kittitas County as 30 percent of total use (Qa). Therefore, for the 21 cabins in the SCSHA community, a total amount of about 0.63 ac-ft/yr is beneficially used, requiring about 0.21 ac-ft/yr (consumptive use) to fully mitigate a new water right.

Based on this rationale, estimated total and consumptive use quantities by month are summarized in Table 2. Because most cabins are rustic and use very little water, and few are occupied year-round, the numbers are considered to be a liberal estimate of actual use.

Table 2: Schedule of Estimated Total and Consumptive Use.

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Total Use (acre-feet)	0.054	0.048	0.054	0.052	0.054	0.052	0.054	0.054	0.052	0.054	0.052	0.054	0.63
Consumptive Use (acre-feet)	0.018	0.016	0.018	0.017	0.018	0.017	0.018	0.018	0.017	0.018	0.017	0.018	0.21

Four Statutory Tests

This Report of Examination (ROE) evaluates the application based on the information presented above and in referenced documents. To approve the application, Ecology must issue written findings of fact and determine that each of the following four requirements of RCW 90.03.290 has been satisfied:

1. The proposed appropriation is a beneficial use;
2. Water is available for appropriation;
3. The proposed appropriation would not impair existing water rights; and
4. The proposed appropriation would not be detrimental to the public welfare.

Beneficial Use

In accordance with RCW 90.54.020(1), the proposed appropriation for group domestic indoor use is a beneficial use of water. As detailed on the Application for Permit and observed during the site visit, the point of diversion is supported by the necessary infrastructure to deliver the full appropriation of water to the cabin community.

Availability

The small unnamed spring has provided the cabin community's water supply for over 50 years. The diversion is the only one located on the small improved spring.

The appropriation proposed under the subject application will be water budget neutral by dedicating 0.21 ac-ft/yr of consumptive use available from Ecology's Cabin Owner Mitigation Program. Month-by-month mitigation is offered to account for the project's indoor only use during the irrigation season (April 1 – October 31). Out-of-season (November 1 – March 31) use and/or potential carry over impacts to instream flows will be mitigated through the USBR-Ecology Water Storage and Exchange Contract.

Potential for Impairment

RCW 90.03.290 and RCW 90.44.060 require a determination that a new appropriation will not impair existing rights. There are no other water right certificates, permits, or claims to the small unnamed spring. In addition, no water rights are located down-gradient between the proposed point of diversion and Rimrock Lake. Furthermore, Rimrock Lake is a proportional massive water body which will not be affected by the proposed appropriation.

Rimrock Lake is a migratory barrier to anadromous salmonids (Tieton Dam has no fish passage facilities). In addition, the small spring is not tributary to any surface water; therefore, is too small to provide habitat for anadromous salmonids (Reclamation 2005), and WDFW fish distribution data indicate no occurrence of Bull Trout or other ESA-listed fish.

Therefore, no impairment to existing rights or to local habitat will occur. Assignment of 0.21 acre-feet is appropriate, given that the flow reduction resulting from this permitted use is below the consultation threshold in paragraph 18(b) of the USBR-Ecology contract.

Public Welfare

The proposed appropriation will provide authorization for domestic supply to the rural cabin community, and is not detrimental to the public interest as provisioned.

CITATIONS

Ecology 2006. 2006 Report to the Legislature, Potential Water Solution for Domestic Surface Water Users, Yakima Basin Camps & Cabin Owners. Publication No. 06-11-044. December 2006.

Reclamation, 2005. Phase I Assessment Report, Storage Dam Fish Passage Study, Yakima Project, Washington. Revised April 2005.

WDFW. SalmonScape. <http://wdfw.wa.gov/mapping/salmonscape/index.html>

CONCLUSIONS

The conclusions based on the above investigation are as follow:

1. The proposed appropriation for group domestic use (indoor only) is a beneficial use of water;
2. The quantity of water requested is made available by purchase of mitigation credits in an amount equivalent to the amount consumed;
3. The proposed appropriation will not impair water rights or local aquatic habitat; and
4. The proposed appropriation will not be detrimental to the public interest.

RECOMMENDATION

Based on the information presented above, the author recommends that a temporary permit be authorized to appropriate surface water in the amounts described, limited, and provisioned on page 1 through 3 of this report. Ecology can only issue temporary permits for new uses in the Yakima Basin while the Yakima Superior Court Adjudication is still ongoing.

Purpose of Use and Authorized Quantities

0.01 cfs, 0.63ac-ft/yr for continuous group domestic use (indoor only).

Point of Diversion

A spring located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 1, T. 13 N., R. 13 E.W.M.

Place of Use

Silver Cove Summer Home Association, Lots 1-18 and 21-23, located northerly of State Highway No. 12 within the NW $\frac{1}{4}$ of Section 1, T. 13 N., R. 13 E.W.M.

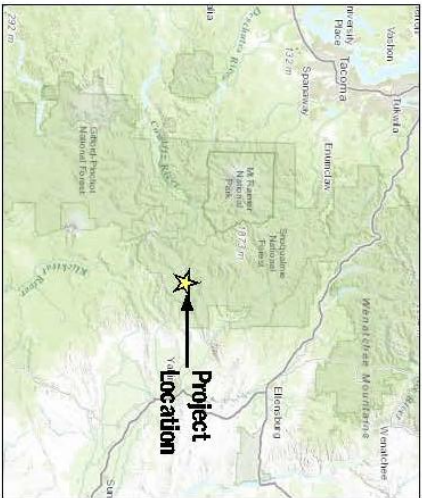
Report by: _____
Tyson D. Carlson, LHG, Aspect Consulting, LLC

Date

Reviewed by: _____
Kelsey S. Collins, Water Resources Program

Date

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Comments: Place of use and point of diversion are defined on the cover sheet under the heading "LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED."

LEGEND

Place of Use:

Place of Use

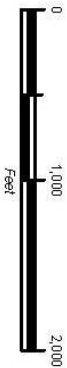
Authorized Point of Diversion



Tax Parcel



Township/Range



No. S4-26927		
Silver Cove Summer Home Association Ecology Cabin Owner Mitigation Program T13N/R13E - Section 1 Yakima County, Washington		
Aspect CONSULTING	January, 2014 ISSUED BY DPO/BSO	ATTACHMENT NO. 1